

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

NORMAN TODD, )  
                  )  
Plaintiff,      )  
                  )  
vs.              )     CASE NO. 2:07-cv-149-MEF  
                  )  
CITY OF CLANTON, et al., )  
                  )  
Defendants.      )

**PLAINTIFF'S COUNTER MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff Norman Todd (hereinafter referred to as the Plaintiff) and respectfully submits this the Plaintiff's Counter Motion for Summary Judgment pursuant to *Federal Rules of Civil Procedure*, Rule 56.

1. Plaintiff incorporates his Response to Defendants' Motion for Summary Judgment, including his narrative Summary of Facts, Exhibits thereto and his Brief and Memorandum of Law.

2. Plaintiff incorporates his Complaint herein by this reference as if more fully set forth.

Plaintiff's Complaint alleged in paragraph 7 that Defendants invaded Plaintiff's privacy and illegally entered and searched Plaintiff's mobile home.

In paragraph 8, Plaintiff alleged invasion of privacy

through trespass and illegal entry into his mobile home.

In paragraph 9, Plaintiff alleged unlawful arrest and detention. Paragraph 18 of Count I of Plaintiff's Complaint alleged the City proceeded with a deliberate indifference and deliberate disregard in violating Plaintiff's rights to privacy interests to be free from unlawful searches of his home and person; to be free from unlawful searches of his home and seizure of his person.

Furthermore, Plaintiff alleged Defendants under color of state law violated Plaintiff's First and Fourth Amendment rights, as well as Fifth Amendment rights, as said actions form the basis of Plaintiff's 42 U.S.C. 1983 claims.

Count II alleged violations of Plaintiff's Fourth and Fifth Amendment rights underlying 42 U.S.C. 1983 claims.

Plaintiff submitted thereafter various allegations against Defendant Charles and the City which alleged invasion of privacy, illegal search and false arrest and detention.

Therefore, Plaintiff placed the City on notice of these claims.

3. This Court, by Order dated September 14, 2007, ordered the Defendants to submit the search warrant for Plaintiff's premises at the time of the entry into Plaintiff's

mobile. No search warrant was produced by the Defendants.

NARRATIVE FACTS

4. It is undisputed that Officer Charles in his official capacity, not exercising a discretionary function, without a search warrant, aided and committed an illegal search of Plaintiff's premises under color of state law. Plaintiff submitted in his Affidavit that supervisors knew, or should have known, Officer Charles had gone to the mobile home park in accordance with his dispatch there.

It is further undisputed that supervisory personnel for the City of Clanton knew prior to Plaintiff's arrest that the warrant for Plaintiff's arrest was premised upon a Complaint which on its face clearly failed to show that a criminal offense had been committed by Plaintiff.

Plaintiff further submitted evidence that he was damaged by the illegal entry and search as well as his arrest.

BRIEF AND MEMORANDUM OF LAW

5. Plaintiff incorporates his Brief and Memorandum of Law herein by this reference set out in his Response to Defendant's Motion for Summary Judgment in support of his claims of Fourth Amendment violations underlying Plaintiff's

42 U.S.C. 1983 claims.

6. Plaintiff has submitted substantial facts and supporting law to substantiate that there are no genuine issues of material fact as to Plaintiff's Fourth Amendment claim of invasion of privacy and illegal search of his residence as well as his false arrest and detention to show that he is entitled to a judgment as a matter of law on his 42 U.S.C. 1983 claims.

7. Plaintiff, therefore, respectfully Moves that he be granted summary judgment on his 42 U.S.C. 1983 claims.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed and that a copy of same will be electronically served upon the following parties on this the 2<sup>nd</sup> day of November, 2007.

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